

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 753

Introduced by Assembly Member Gordon

February 18, 2005

An act to amend Sections 25658, 25658.2, 25658.5, and 25662 of the Business and Professions Code, relating to alcoholic beverages. An act to amend Sections 25658 and 25658.2 of the Business and Professions Code, and to add Section 13202.3 to the Vehicle Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 753, as amended, Gordon. Alcoholic beverages: underage drinking: suspension of driving privileges.

The Alcoholic Beverage Control Act makes it a misdemeanor for any person under the age of 21 years to purchase any alcoholic beverage or to consume any alcoholic beverage in any on-sale premises, ~~or to have an alcoholic beverage in his or her possession in specified public places.~~ The act also makes it a misdemeanor if any person sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverages to any person under the age of 21 years. The act makes it a misdemeanor for a parent or legal guardian to knowingly permit a child under the age of 18 years to consume an alcoholic beverage or to use a controlled substance at the home of the parent or legal guardian. ~~The act makes it an infraction for any person under the age of 21 years to attempt to purchase alcoholic beverages from a licensee or agent or representative of a licensee.~~

This bill, in addition to the penalties imposed under these provisions, would ~~also~~ require the suspension *or the delay* of the

driving—~~privileges~~ *privilege*, as specified, of ~~the~~ *a* person who *knowingly* violates any of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25658 of the Business and Professions
2 Code is amended to read:

3 25658. (a) Except as otherwise provided in subdivision (c),
4 every person who sells, furnishes, gives, or causes to be sold,
5 furnished, or given away, any alcoholic beverage to any person
6 under the age of 21 years is guilty of a misdemeanor.

7 (b) Any person under the age of 21 years who purchases any
8 alcoholic beverage, or any person under the age of 21 years who
9 consumes any alcoholic beverage in any on-sale premises, is
10 guilty of a misdemeanor.

11 (c) Any person who violates subdivision (a) by purchasing any
12 alcoholic beverage for, or furnishing, giving, or giving away any
13 alcoholic beverage to, a person under the age of 21 years, and the
14 person under the age of 21 years thereafter consumes the alcohol
15 and thereby proximately causes great bodily injury or death to
16 himself, herself, or any other person, is guilty of a misdemeanor.

17 (d) Any on-sale licensee who knowingly permits a person
18 under the age of 21 years to consume any alcoholic beverage in
19 the on-sale premises, whether or not the licensee has knowledge
20 that the person is under the age of 21 years, is guilty of a
21 misdemeanor.

22 (e) (1) (A) ~~(i)~~—Except as otherwise provided in paragraph (2)
23 or (3), any person who violates this section shall be punished by
24 a fine of two hundred fifty dollars (\$250), no part of which shall
25 be suspended, or the person shall be required to perform not less
26 than 24 hours or more than 32 hours of community service
27 during hours when the person is not employed and is not
28 attending school, or a combination of fine and community
29 service as determined by the court.

30 ~~(ii) In addition to the penalty imposed under clause (i), the~~
31 ~~person's driving privileges shall be suspended for a one-year~~
32 ~~period. If that person is not licensed to drive, the Department of~~
33 ~~Motor Vehicles shall delay the issuance of a driver's license to~~

1 ~~that person for a period of one year following the date that the~~
2 ~~license would have been issued.~~

3 (B) ~~(i)~~—A second or subsequent violation of subdivision (b)
4 shall be punished by a fine of not more than five hundred dollars
5 (\$500), or the person shall be required to perform not less than 36
6 hours or more than 48 hours of community service during hours
7 when the person is not employed and is not attending school, or a
8 combination of fine and community service as determined by the
9 court.

10 ~~(ii)~~—~~In addition to the penalty imposed under clause (i), the~~
11 ~~person's driving privileges shall be suspended for a two-year~~
12 ~~period. If that person is not licensed to drive, the Department of~~
13 ~~Motor Vehicles shall delay the issuance of a driver's license to~~
14 ~~that person for a period of two years following the date that the~~
15 ~~license would have been issued.~~

16 (2) ~~(A)~~—Except as provided in paragraph (3), any person who
17 violates subdivision (a) by furnishing an alcoholic beverage, or
18 causing an alcoholic beverage to be furnished, to a minor shall be
19 punished by a fine of one thousand dollars (\$1,000), no part of
20 which shall be suspended, and the person shall be required to
21 perform not less than 24 hours of community service during
22 hours when the person is not employed and is not attending
23 school.

24 ~~(B)~~—~~In addition to the penalty imposed under subparagraph~~
25 ~~(A), the person's driving privileges shall be suspended for a~~
26 ~~one-year period. If that person is not licensed to drive, the~~
27 ~~Department of Motor Vehicles shall delay the issuance of a~~
28 ~~driver's license to that person for a period of one year following~~
29 ~~the date that the license would have been issued.~~

30 (3) ~~(A)~~—Any person who violates subdivision (c) shall be
31 punished by imprisonment in a county jail for a minimum term of
32 six months not to exceed one year, by a fine not exceeding one
33 thousand dollars (\$1,000), or by both imprisonment and fine.

34 ~~(B)~~—~~In addition to the penalty imposed under subparagraph~~
35 ~~(A), the person's driving privileges shall be suspended for a~~
36 ~~one-year period. If that person is not licensed to drive, the~~
37 ~~Department of Motor Vehicles shall delay the issuance of a~~
38 ~~driver's license to that person for a period of one year following~~
39 ~~the date that the license would have been issued.~~

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, who sell alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution *or the imposition of penalties* under any other provision of law, including, but not limited to, Section 272 of the Penal Code *and Section 13202.3 of the Vehicle Code*.

(h) It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

SEC. 2. Section 25658.2 of the Business and Professions Code is amended to read:

25658.2. (a) A parent or legal guardian who knowingly permits his or her child, or a person in the company of the child, or both, who are under the age of 18 years, to consume an alcoholic beverage or use a controlled substance at the home of the parent or legal guardian is guilty of misdemeanor if all of the following occur:

(1) As the result of the consumption of an alcoholic beverage or use of a controlled substance at the home of the parent or legal guardian, the child or other underage person has a blood-alcohol concentration of 0.05 percent or greater, as measured by a chemical test, or is under the influence of a controlled substance.

(2) The parent knowingly permits that child or other underage person, after leaving the parent's or legal guardian's home, to drive a vehicle.

(3) That child or underage person is found to have caused a traffic collision while driving the vehicle.

(b) ~~(1)~~—A person who violates subdivision (a) shall be punished by imprisonment in a county jail for a term not to exceed one year, by a fine not exceeding one thousand dollars (\$1,000), or by both imprisonment and fine.

~~(2) In addition to the penalty imposed under paragraph (1), the person's driving privileges shall be suspended for a one-year period. If that person is not licensed to drive, the Department of Motor Vehicles shall delay the issuance of a driver's license to that person for a period of one year following the date that the license would have been issued.~~

(c) *The penalties imposed by this section are in addition to any other penalties imposed by law, including, but not limited to, Section 13202.3 of the Vehicle Code.*

SEC. 3. Section 13202.3 is added to the Vehicle Code, to read:

13202.3. (a) *For each conviction of a person who knowingly violates Section 25658 or 25658.2 of the Business and Professions Code, the court shall do either of the following:*

(1) For a person who holds a valid driver's license, the court shall suspend the person's driving privilege for one year.

(2) For a person who is not licensed to drive, the court shall order the department to delay the issuance of a driver's license

1 to that person for a period of one year following the date that the
2 license would have been issued.

3 (b) For each successive conviction, the court shall suspend or
4 delay the person's driving privilege for one additional year.

5 (c) Whenever the court suspends a person's driving privilege
6 pursuant to paragraph (1) of subdivision (a), the court shall
7 order all driver's licenses held by the person convicted to be
8 surrendered to the court.

9 (d) The court shall, within 10 days following the conviction,
10 transmit a certified abstract of the conviction, together with any
11 driver's licenses surrendered, to the department.

12 (e) After a court has issued an order suspending or delaying a
13 person's driving privilege pursuant to subdivision (a), the court,
14 upon petition and a showing of a critical need to drive by the
15 person affected, may review the order and may modify the
16 suspension or delay by imposing restrictions on the person's
17 driving privilege.

18 (f) The restriction imposed pursuant to subdivision (e) shall
19 remain in effect for the balance of the suspension or delay
20 imposed pursuant to this section. The court shall notify the
21 department of any modification within 10 days of the order of
22 modification.

23 (g) Suspension, delay, or restriction of driving privileges
24 imposed pursuant to this section shall be in addition to any other
25 penalties imposed for a violation of Section 25658 or 25658.2 of
26 the Business and Professions Code.

27 ~~SEC. 3. Section 25658.5 of the Business and Professions~~
28 ~~Code is amended to read:~~

29 ~~25658.5. (a) (1) Any person under the age of 21 years who~~
30 ~~attempts to purchase any alcoholic beverage from a licensee, or~~
31 ~~the licensee's agent or employee, is guilty of an infraction and~~
32 ~~shall be punished by a fine of not more than one hundred dollars~~
33 ~~(\$100), or the person shall be required to perform not less than 24~~
34 ~~hours or more than 32 hours of community service during hours~~
35 ~~when the person is not employed or is not attending school, or a~~
36 ~~combination of fine and community service as determined by the~~
37 ~~court.~~

38 ~~(2) In addition to the penalty imposed under paragraph (1), the~~
39 ~~person's driving privileges shall be suspended for a one-year~~
40 ~~period. If that person is not licensed to drive, the Department of~~

1 ~~Motor Vehicles shall delay the issuance of a driver's license to~~
2 ~~that person for a period of one year following the date that the~~
3 ~~license would have been issued.~~

4 ~~(b) (1) A second or subsequent violation of this section shall~~
5 ~~be punished by a fine of not more than two hundred fifty dollars~~
6 ~~(\$250), or the person shall be required to perform not less than 36~~
7 ~~hours or more than 48 hours of community service during hours~~
8 ~~when the person is not employed or is not attending school, or a~~
9 ~~combination of fine and community service, as the court deems~~
10 ~~just.~~

11 ~~(2) In addition to the penalty imposed under paragraph (1), the~~
12 ~~person's driving privileges shall be suspended for a two-year~~
13 ~~period. If that person is not licensed to drive, the Department of~~
14 ~~Motor Vehicles shall delay the issuance of a driver's license to~~
15 ~~that person for a period of two years following the date that the~~
16 ~~license would have been issued.~~

17 ~~(e) It is the intent of the Legislature that the community~~
18 ~~service requirements prescribed in this section require service at~~
19 ~~an alcohol or drug treatment program or facility or at a county~~
20 ~~coroner's office, if available, in the area where the violation~~
21 ~~occurred or where the person resides.~~

22 ~~SEC. 4. Section 25662 of the Business and Professions Code~~
23 ~~is amended to read:~~

24 ~~25662. (a) (1) Any person under the age of 21 years who has~~
25 ~~any alcoholic beverage in his or her possession on any street or~~
26 ~~highway or in any public place or in any place open to the public~~
27 ~~is guilty of a misdemeanor and shall be punished by a fine of two~~
28 ~~hundred fifty dollars (\$250) or the person shall be required to~~
29 ~~perform not less than 24 hours or more than 32 hours of~~
30 ~~community service during hours when the person is not~~
31 ~~employed or is not attending school.~~

32 ~~(2) In addition to the penalty imposed under paragraph (1), the~~
33 ~~person's driving privileges shall be suspended for a one-year~~
34 ~~period. If that person is not licensed to drive, the Department of~~
35 ~~Motor Vehicles shall delay the issuance of a driver's license to~~
36 ~~that person for a period of one year following the date that the~~
37 ~~license would have been issued.~~

38 ~~(b) (1) A second or subsequent violation shall be punishable~~
39 ~~as a misdemeanor and the person shall be fined not more than~~
40 ~~five hundred dollars (\$500), or required to perform not less than~~

1 ~~36 hours or more than 48 hours of community service during~~
2 ~~hours when the person is not employed or is not attending school,~~
3 ~~or a combination of fine and community service as the court~~
4 ~~deems just.~~

5 ~~(2) In addition to the penalty imposed under paragraph (1), the~~
6 ~~person's driving privileges shall be suspended for a two-year~~
7 ~~period. If that person is not licensed to drive, the Department of~~
8 ~~Motor Vehicles shall delay the issuance of a driver's license to~~
9 ~~that person for a period of two years following the date that the~~
10 ~~license would have been issued.~~

11 ~~(e) It is the intent of the Legislature that the community~~
12 ~~service requirements prescribed in this section require service at~~
13 ~~an alcohol or drug treatment program or facility or at a county~~
14 ~~coroner's office, if available, in the area where the violation~~
15 ~~occurred or where the person resides.~~

16 ~~(d) This section does not apply to possession by a person~~
17 ~~under the age of 21 years making a delivery of an alcoholic~~
18 ~~beverage in pursuance of the order of his or her parent,~~
19 ~~responsible adult relative, or any other adult designated by the~~
20 ~~parent or legal guardian, or in pursuance of his or her~~
21 ~~employment. That person shall have a complete defense if he or~~
22 ~~she was following, in a timely manner, the reasonable~~
23 ~~instructions of his or her parent, legal guardian, responsible adult~~
24 ~~relative, or adult designee relating to disposition of the alcoholic~~
25 ~~beverage.~~

26 ~~(e) (1) Unless otherwise provided by law, where a peace~~
27 ~~officer has lawfully entered the premises, the peace officer may~~
28 ~~seize any alcoholic beverage in plain view that is in the~~
29 ~~possession of, or provided to, a person under the age of 21 years~~
30 ~~at social gatherings, when those gatherings are open to the~~
31 ~~public, 10 or more persons under the age of 21 years are~~
32 ~~participating, persons under the age of 21 years are consuming~~
33 ~~alcoholic beverages, and there is no supervision of the social~~
34 ~~gathering by a parent or guardian of one or more of the~~
35 ~~participants.~~

36 ~~(2) If a peace officer has seized alcoholic beverages pursuant~~
37 ~~to this subdivision, the officer may destroy any alcoholic~~
38 ~~beverage contained in an opened container and in the possession~~
39 ~~of, or provided to, a person under the age of 21 years, and, with~~
40 ~~respect to alcoholic beverages in unopened containers, the officer~~

1 ~~shall impound those beverages for a period not to exceed seven~~
2 ~~working days pending a request for the release of those~~
3 ~~beverages by a person 21 years of age or older who is the lawful~~
4 ~~owner or resident of the property upon which the alcoholic~~
5 ~~beverages were seized. If no one requests release of the seized~~
6 ~~alcoholic beverages within that period, those beverages may be~~
7 ~~destroyed.~~

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